

WM 08-263 JF
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARIA SABILLON and RUBEN SABILLON,

Docket No.: 08CV6455

Plaintiffs,

-against-

A N S W E R

WAL-MART STORES, INC.,

Defendant.
-----X

The defendant, WAL-MART STORES EAST, LP i/s/h/a WAL-MART STORES, INC., by its attorneys, BRODY, O'CONNOR & O'CONNOR, ESQS., answering the Complaint herein states upon information and belief:

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "1.1", and each and every part thereof.

SECOND: Defendant denies the allegations set forth in paragraph marked "1.2", except admits that WAL-MART STORES EAST, LP is a foreign limited partnership registered to do business in the State of New York and its principal place of business in the State of Arkansas.

THIRD: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "1.3", and each and every part thereof.

FOURTH: Defendant denies the allegations set forth in paragraph marked "1.4", except admits that WAL-MART STORES EAST, LP is a foreign limited partnership registered to do business in the State of New York and its principal place of business in the State of Arkansas.

FIFTH: Defendant denies the allegations set forth in paragraph marked "2.1", and each and every part thereof.

SIXTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "2.2", and each and every part thereof.

SEVENTH: Defendant denies the allegations set forth in paragraphs marked "3.1", and "3.2", except admits that WAL-MART STORES EAST, LP is the operating entity of the Secacus Wal-Mart.

EIGHTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked "3.3", "3.4", "3.5", "3.6", "3.7", "3.8", "3.8", "3.9", and each and every part thereof.

AS TO THE FIRST CAUSE OF ACTION

NINTH: Defendant denies the allegations set forth in paragraphs marked "4.1", "4.2", "4.3", and "4.4", and each and every part thereof.

AS TO THE SECOND CAUSE OF ACTION

TENTH: Defendant repeats and reiterates each and every denial in answer to paragraphs numbered "1.1" through "4.4", of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered "5.1", and each and every part thereof.

ELEVENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "5.2", and each and every part thereof.

TWELFTH: Defendant denies the allegations set forth in paragraph marked "5.3", and each and every part thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

THIRTEENTH: The plaintiff, MARIA SABILLON, was guilty of culpable conduct, including contributory negligence and/or assumption of risk, and should an award be made to

plaintiffs, same should be diminished in the proportion which the culpable conduct and/or contributory negligence and/or assumption of risk attributable to the plaintiffs bears to the culpable conduct and/or negligence which caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FOURTEENTH: In the event that plaintiffs recover judgment against this answering defendant and it is determined that plaintiffs' damages were caused in whole or in part by two or more joint tortfeasors, then defendant's liability herein for non-economic loss may not exceed its equitable share of said damages in accordance with its relative culpability, as provided by Section 1601 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

FIFTEENTH: Plaintiffs' recovery, if any, shall be reduced by the amount of any collateral payments received, in accordance with CPLR Section 4545.


WHEREFORE, defendant, WAL-MART STORES EAST, LP i/s/h/a WAL-MART STORES, INC., requests judgment dismissing the Complaint herein, together with costs and disbursements of this action.

Dated: Northport, New York
July 28, 2008

Respectfully Yours,

BRODY, O'CONNOR & O'CONNOR, ESQS.
Attorneys for Defendant

By: _____


PATRICIA A. O'CONNOR (PO5645)
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Northport, New York 11768
(631) 261-7778
File No.: WM 08-263 JF

TO: HAWTHORNE LAW FIRM, LLC
Attorneys for Plaintiffs
594 Grand Concourse, Suite 1
Bronx, New York 10451
(718) 665-0050

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

DEBRA SANACORA, being duly sworn, deposes and says:

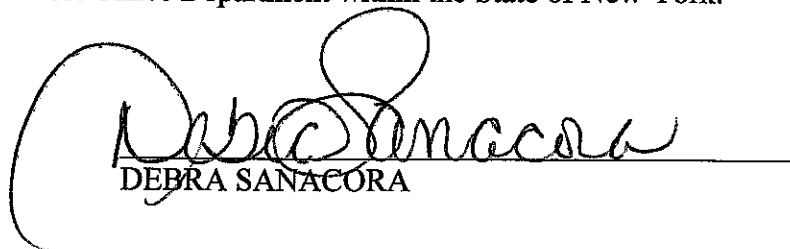
That your deponent is not a party to this action, is over 18 years of age and resides at Ronkonkoma, New York.

That on the 30 day of July, 2008, deponent served the within ANSWER

UPON:

HAWTHORNE LAW FIRM, LLC
Attorneys for Plaintiffs
594 Grand Concourse, Suite 1
Bronx, New York 10451
(718) 665-0050

The address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


DEBRA SANACORA

Sworn to before me this
30 day of July, 2008.


NOTARY PUBLIC

JENNIFER CULVER FRIEDRICH
NOTARY PUBLIC-STATE OF NEW YORK
No. 02FR6090005
Qualified in Suffolk County
My Commission Expires May 14, 20 11